



IPN

Date: June 29, 2005 I hereby certify that, on the date indicated above, I deposited this paper with identified attachments and/or fee with the U.S. Postal Service and that it was addressed for delivery to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 by "First Class Priority Mail" service.

Donald S. Prater
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: HABECKER et al.)
Application No.: 10/770,895)
Filed: February 3, 2004)
Docket No.: 99024CIPDIV2 (3600-234-03))
Examiner: Ngoclan Thi MAI
Group Art Unit: 1742
Confirmation No.: 1073

For: METHOD OF MAKING NIOBIUM AND OTHER METAL POWDERS

RESPONSE TO RESTRICTION REQUIREMENT
AND ELECTION OF SPECIES REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

June 29, 2005

Sir:

This Response to Election of Species Requirement and Restriction Requirement is in response to the Office Action dated June 21, 2005, for which the Examiner has set a one-month period for response, thus making the response due on or before July 21, 2005.

In the Office Action, the Examiner sets forth a two-way restriction requirement wherein Group I, claims 28-30, 44-62, and 71-89 are drawn to a niobium powder; and Group II, claims 31-33 and 63-70 are drawn to capacitor.

To be responsive, the applicants elect, with traverse, Group I, claims 28-30, 44-62, and 71-89 for examination.

The applicants believe that the remaining claims, namely claims 31-33 and 63-70 should be examined at this time since there appears to be no serious burden on the part of the Examiner to

Response To Restriction Requirement and Election of Species Requirement
U.S. Patent Application No. 10/770,895

search the entire scope of the claims. It is believed that the subject matter has the same concept from the stand point that the searches would overlap. Further, the claims that recite a capacitor anode are dependent on the niobium powder claims of Group I. Under M.P.E.P. § 803, if there is no serious burden in the examination of all of the claims even if the claims are directed to separate inventions, the Examiner must examine all claims at this time. It would appear that § 803 applies to the current situation and therefore the restriction requirement should be withdrawn and all claims should be examined at this time.

Also, the Examiner sets forth an Election of Species Requirement with respect to the present application.

In particular, the Examiner requested that applicants elect either 1) niobium powder or 2) hydrided niobium powder as a "patentably distinct species."

To be responsive, applicants elect with traverse "hydrided niobium" as the species for examination.

With respect to this election of species, the claims that read upon this election include at least claims 71-89.

The applicants believe that the remaining species can be examined at this time since there appears to be no serious burden on the part of the Examiner to search the entire scope of the claims. At a minimum, the Examiner should proceed with examination of the remaining species upon determining the patentability of the elected species.

If there are any fees due in connection with the filing of this response, please charge the fees to Deposit Account No. 50-0925. If a fee is required for an extension of time under 37 C.F.R. §

Response To Restriction Requirement and Election of Species Requirement
U.S. Patent Application No. 10/770,895

1.136 not accounted for above, such extension is requested and should also be charged to said Deposit Account.

Respectfully submitted,



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